



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** National Customer Engineering

**File:** B-255615

**Date:** March 9, 1994

Thomas N. Jones, for the protester.  
D.C. Drennon, Department of Energy, for the agency.  
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

A procuring agency properly issued delivery orders under General Services Administration nonmandatory schedule contracts for interim computer hardware and software maintenance services after considering the schedule contracts of the only three known schedule contractors (including the protester's) and the orders resulted in the lowest overall cost to the government.

### DECISION

National Customer Engineering (NCE) protests the issuance of delivery orders to Computervision (No. AA-DO-11529-18986) and Revacomp Incorporated (No. AA-DO-11484-09872), by the Western Area Power Administration (WAPA), Department of Energy, for hardware and software maintenance services under Computervision's and Revacomp's nonmandatory schedule contracts with the General Services Administration (GSA). NCE contends that the awards did not result in the lowest overall cost to the government and that WAPA improperly did not publish the agency's intended issuance of delivery orders in the Commerce Business Daily (CBD).

We deny the protest.

WAPA has historically obtained hardware and software maintenance services for its prime computer system by placing orders against GSA nonmandatory schedule contracts. In 1993, WAPA issued request for proposals (RFP) No. DE-RP65-93WA11094, which anticipated the October 1 competitive award of a contract for hardware and maintenance services for a 3-year contract term. Prior to the closing date for receipt of proposals, NCE protested the terms of the solicitation to our Office; we denied the protest in

National Customer Enq'g, B-254950, Jan. 27, 1994, 94-1 CFD  
 ¶ \_\_\_\_.

Pending our resolution of NCE's protest of the RFP, WAPA sought to obtain the required computer maintenance services on an interim basis by issuing delivery orders under the GSA nonmandatory schedule contracts of the three known schedule vendors: NCE, Revacomp and Computervision. Specifically, WAPA issued delivery orders to Computervision and Revacomp on September 24 for October maintenance services. On October 28, WAPA issued delivery orders to Computervision in the amount of \$34,045 and to Revacomp in the amount of \$9,545 for hardware and software maintenance services at various locations for November; award selections for each location were based upon the lowest offered price per site, as based upon WAPA comparison of the three vendors' 1993 schedule contracts.

NCE protests that WAPA's delivery orders for the November computer services were inconsistent with the Federal Information Resources Management Regulation (FIRMR), 41 C.F.R. § 201-39.803-1(b) (1993), which provides that agencies should only use GSA nonmandatory schedule contracts for Federal Information Processing (FIP) resources when the contracting officer determines that placing an order under a GSA nonmandatory schedule contract would result in a lower overall cost than using other contract methods.<sup>1</sup> NCE suggests that a competitive procurement would have resulted in a lower overall cost for the services.

GSA's nonmandatory schedule contracts provide agencies with a simplified process for obtaining FIP resources. 41 C.F.R. § 201-39.803-1. The FIRMR permits an agency to place an order against nonmandatory schedule contracts for FIP resources when certain conditions are met. These conditions include publishing in the CBD the agency's intent to place orders in excess of \$50,000 and considering the offerings of a reasonable number of nonmandatory schedule contracts. 41 C.F.R. §§ 201-39.501.2(a)(1); 201-39.803-3. If the agency determines that a contractor's nonmandatory schedule contract offering provides the lowest overall cost alternative to meet the government's needs, the agency may place an order against the schedule contract. 41 C.F.R. § 201-39.803-3(b)(2)(ii).

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<sup>1</sup>"FIP resources" includes automatic data processing equipment, software, services, support services, maintenance, related supplies and systems. FIRMR § 201-39.201.

From our review of the record, we find no basis to question the agency's issuance of the challenged delivery orders. As noted above, WAPA planned to fulfill its computer maintenance needs by competitively awarding a 3-year contract; because of NCE's protest, WAPA could not continue with its procurement plan but issued nonmandatory schedule contract delivery orders as an interim measure. The 1993 schedule contracts of the only three known schedule vendors--NCE, Computervision, and Revacomp--were considered by the agency, which placed orders based upon which vendor offered the lowest cost per site.<sup>2</sup> In the absence of any evidence presented by the protester or otherwise in the record showing that some other alternative would result in a lower overall cost to the government, price and other factors considered, we find reasonable the agency's determination to place orders under the nonmandatory schedule contracts to satisfy its interim procurement needs.

NCE also complains that WAPA did not synopsise its intent to issue delivery orders for the computer services as required by the Small Business Act, 15 U.S.C. § 637(e) (1988), and Office of Federal Procurement Policy Act, as amended, 41 U.S.C. § 416(a)(1) (1988). The record shows that NCE was not competitively prejudiced or affected by the non-publication of WAPA's intended delivery orders for November computer maintenance services. NCE knew in October of WAPA's intent to place nonmandatory schedule contract orders for computer maintenance services for November and requested that NCE be considered as a possible source for the services. As indicated above, the agency considered NCE's schedule contract and NCE was the not the lowest overall cost alternative for any site. In the absence of prejudice, we will not question an agency's failure to synopsise its requirements. See Pauli & Griffin, B-234191, May 17, 1989, 89-1 CPD ¶ 473; Gott Corp., B-222586, Aug. 5, 1986, 86-2 CPD ¶ 154.

The protest is denied.

Robert P. Murphy  
Acting General Counsel

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<sup>2</sup>NCE complains that WAPA improperly used the vendors' 1993 nonmandatory schedule prices, when the 1993 schedule contracts had expired on September 30, 1993. At the time the delivery orders were placed, the vendors' 1994 schedule contracts were not available. The record shows that NCE would not have been the lowest cost alternative for any site even under the vendors' 1994 schedule contracts.